IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 2587 OF 2001 (M/S)

Old CMWP No. 38249 of 1998

State of U.P. through the Competent Authority
Urban Land Ceiling Dehradun.

… **Petitioners.**

Versus

1. Jai Bhagwan Dobhal
2. Mahesh Chand Dobhal,
3. Satish Chand Dobhal
   Sons of Sri Bhagwati Prasad Dobhal,
   R/O village Dhoran, Dehradun
4. District Judge, Dehradun.

…. **Respondents.**

Sri Nand Prasad, learned Standing Counsel for the petitioners.

Dated 9-03-2006

Hon'ble B.S. Verma, J.

By means of the present Writ Petition, the petitioners-State has challenged the judgment and order dated 26-5-1994 passed by the District Judge, Dehradun (respondent no. 4) in Urban Land Ceiling Appeal No. 61 of 1991, Jai Bhagwan Dobhal and others vs. State of Uttar Pradesh. By the impugned judgment and order ***(Annexure-1to the writ petition),*** respondent no.4 allowed the appeal, by declaring the appellants are not possessed of any excess vacant land.

Brief facts giving rise to the present writ petition are that proceedings for declaring excess vacant land under the provisions of Urban Land (Ceiling and Regulation) Act 1976 (**for short the Act)** were initiated against the land holder Onkar Devi, who filed statement of the properties held by her under Section 6(1) of the Act. Smt. Onkar Devi died during the pendency of the proceedings and her legal heirs were arrayed parties to the

proceedings. Land in area of 15,118.88 Sq.Mt. exempting 2000 sq.mt. land under ceiling limit was proposed to be declared surplus vacant land. The competent authority after making necessary enquiry and survey proposed to declare the surplus vacant land held by the landholder under Section 8 (3) of the Act. The land-holders (Jai Bhagwan Dobhal and others) filed objection denying that the provision of the Act is not applicable in their case alleging that the land in question is agricultural land. The competent Authority after perusing the material on record came to the conclusion that land-holders held 15118.88 sq.mt. excess vacant land and vide judgment and order dated 16-3-1991, ordered for action under Section 9 of the Act. Aggrieved, the land-holders preferred an appeal before the District Judge, which was allowed vide judgment and order dated 26-5-1994 and declared that the appellants were not possessed of any excess vacant land as mentioned above.

I have heard learned Standing Counsel for the State and perused the record.

The Act Urban Land (Ceiling and Regulation) Act, 1976 (Act No. 33 of 1976) was repealed by the Central Act No. 15 of 1999. The Legislature of State of U.P. has since adopted the provisions of the Urban Land (Ceiling and Regulation) Act 1999, by a resolution as required by Article 252(2) of the Constitution, which has come into force in Uttar Pradesh on 18-03-1999 and the same are also applicable in the State of Uttaranchal.

Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 provides as under:

> **"4**. ***Abatement of legal proceedings.-All proceedings relation to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or other authority shall abate;***
>
> ***Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14***

of the principal Act in so far as such proceedings are relatable to the land possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority."

As stated by the learned Standing Counsel, Sri Nand Prasad, appearing on behalf of the State, no declaration has been published under Section 10(3) of the principal Act, therefore, no question of vesting of the land in the State or taking over possession arises. The effect of the repealing Act on present case is that where for land in dispute, no declaration was published under Section 10(3) of the Act, there is no question of vesting the land in the State or taking over possession of it. The present proceedings have to be abated and are hereby abated under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

The facts of the case are squarely covered by the judgment of the Apex Court in the case of ***"Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and others" (2000, AIR, SCW, 1882).***

In view of the above, the Writ Petition has become infructuous and is dismissed as infructuous. Ordered accordingly.

(B.S.Verma, J.)

RCP